

DA 00-1155

May 31 10 11 AM '00

DISPATCH

**Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Lynn Haven, Florida)**

MM Docket No. 00-93
RM-9881

Adopted: May 17, 2000

Released: May 26, 2000

Comment Date: July 17, 2000

Reply Date: August 1, 2000

By the Chief, Allocations Branch

1. The Commission has before it for consideration a Petition for Rule Making filed on behalf of Beacon House Communications (“Beacon”) requesting the allotment of Channel 282A to Lynn Haven, Florida, as the community’s first local FM broadcast service. Beacon indicated that it would file an application for Channel 282A at Lynn Haven if the channel is allotted to the community.
2. In support of the proposal, Beacon states that area radio stations fail to provide programming that is responsive to the interests and needs of the residents of Lynn Haven. Allotting an FM channel to the community will provide a local outlet for the residents of Lynn Haven. Further, Beacon states that Lynn Haven is eligible for an allotment as it is an incorporated town with its own government, fire and police departments, municipal services, schools, businesses and houses of worship, many of which use the town’s name. Beacon also states that the U.S. Census has a separate town listing for Lynn Haven, indicating a 1990 population of 9,298 people.
3. We believe the proposal warrants consideration because the proposed allotment would provide a first local service to the community of Lynn Haven, Florida. A staff engineering analysis indicates that Channel 282A can be allotted to Lynn Haven consistent with the minimum distance separation requirements of the Commission’s Rules with a site restriction 8.3 kilometers (5.2 miles) southwest of the community.¹ Our analysis also indicates that Lynn Haven is located within the Urbanized Area of Panama City and that the 70 dBu contour of Channel 282A at the proposed site will cover the community of Lynn Haven and the Panama City Corporate Limits.² We note that the site proposed is

The coordinates for Channel 282A at Lynn Haven are 30-11-20 NL and 85-42-20 WL.

close to the Panama City Airport. Therefore, parties filing comments should address the issue of site availability with regard to the Panama City Airport.

4. In view of the fact that the proposed allotment could provide a first local service to Lynn Haven, the Commission believes it would serve the public interest to solicit comments on the proposal to allot Channel 282A to Lynn Haven, Florida. Therefore, we will seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to Lynn Haven, Florida.

Community	Channel No.	
	Present	Proposed
Lynn Haven, Florida	-----	282A

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before July 17, 2000, and reply comments on or before August 1, 2000, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D. C., 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Cary S. Tepper
Booth, Freret, Imlay & Tepper, P.C.
5101 Wisconsin Avenue, N.W., Suite 307
Washington, D. C. 20016-4120

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory

² Beacon provided information to demonstrate that Lynn Haven is independent of the Panama City Urbanized Area pursuant to the criteria set forth in Faye and Richard Tuck ("Tuck"), 3 FCC Rcd 5374 (1988). Beacon states that Lynn Haven is an incorporated town, has its own elected government comprised of a mayor and four commissioners, has its own fire and police departments, and provides water, garbage and sewer service to the residents of Lynn Haven. Lynn Haven has its own elementary school, the Mowat Middle School and Mosley High School. Further, many businesses and houses of worship use the town's name, such as: Lynn Haven Coin Laundry, Lynn Haven Child Care, Lynn Haven Seafood Market, Lynn Haven Florist, Lynn Haven Presbyterian Church, Lynn Haven Methodist Church and Lynn Haven Baptist Church. Finally, the U.S. Census Bureau has a separate town listing for Lynn Haven, indicating a 1990 population of 9,298 people. Commission research also found that Lynn Haven was chartered in 1913 with an area of 8.48 square miles, has its own post office and zip code (32444), medical facilities, Lynn Haven Library and a City Recreation Department.

Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1.Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204.(b) and 0.283 of the Commission's Rules, **IT IS PROPOSED TO AMEND**

the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties, must be made in written comments reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D. C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 445 Twelfth Street, SW, Washington, D. C 20554.